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February 4, 2003

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Application by Verizon Maryland, Verizon Washington, DC and Verizon West Virginia for Authorization To Provide In-Region, InterLATA Services in States of Maryland, Washington, DC and West Virginia*, WC Docket No. 02-384

Dear Ms. Dortch:

Per request of the Wireline Competition Bureau staff, Verizon is providing the attached DC Public Service Commission's Order, dated January 31, 2003, approving an amendment to an interconnection agreement between Verizon DC and Allegiance Telecom. Please let me know if you have any questions. The twenty-page limit does not apply as set forth in DA 02-3511.

Sincerely,

Attachment

cc: G. Cohen
G. Gooke
G. Remondino
V. Schlesinger

TIA-99 • 15 - 13

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd Floor, West Tower
WASHINGTON, D.C. 20005

ORDER APPROVING AMENDMENT TO INTERCONNECTION AGREEMENT

January 31, 2003

FORMAL CASE NO. TIA 99-15, IN THE MATTER OF THE APPLICATION OF VERIZON WASHINGTON, DC, INC. FOR APPROVAL OF AN AMENDMENT TO AN INTERCONNECTION AGREEMENT WITH ALLEGIANCE TELECOM OF THE DISTRICT OF COLUMBIA, INC. UNDER SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996, Order No. 12646

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") hereby approves an amendment to an interconnection agreement ("Amended Agreement") between Verizon Washington, DC Inc. ("Verizon DC") and Allegiance Telecom of the District of Columbia, Inc. ("Allegiance") (collectively, "the Applicants").[1] This Amended Agreement was submitted to the Commission for approval pursuant to Section 252(e) of the Communications Act of 1934 ("the Act").[2]

I. BACKGROUND

2. On January 13, 2003, Verizon DC filed a request for approval of its interconnection agreement with Allegiance asserting that the Amendment complies with Section 252(e)(2)(A)(i) and (ii) because: 1) it has offered the same terms to all other Competitive Local Exchange Carriers; 2) the rates included in the Amendment satisfy the Federal Communications Commission ("FCC") requirement that the rates be TELRIC-compliant; and 3) the rates included in the agreement will be in force only for such period as the rates set in Order No. 12610 are stayed, or such other rates as are deemed or determined or approved by the Commission to replace the rates in Order No. 12610, become effective in accordance with applicable law.

3. Since 1996, Verizon DC's unbundled network elements ("UNE") have been the FCC's proxy rates that the Commission adopted in lieu of establishing cost-based rates for the District of Columbia. Because the Commission never determined that these rates were TELRIC-compliant, they cannot be used to satisfy the requirements of Section 271 of the Act of 1996.[3] In 2000, the Eighth Circuit vacated the FCC's rules

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[1] Formal Case No. TIA 99-15, *In the Matter of the Joint Application of Verizon Washington, DC Inc. and Allegiance Telecom of the District of Columbia, Inc. for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996* ("F.C. No. TIA 99-15"), filed January 13, 2003.

[2] 47 U.S.C. § 252(e) (1996).

[3] Section 271 of the Act prohibits a Bell operating company like Verizon DC from providing interLATA services until it first satisfies the 14 criteria listed under § 271(c)(2)(B).

containing the proxy rates.[4] Without TELRIC-compliant rates, Verizon DC cannot obtain FCC approval on a request for Section 271 relief.

4. On December 6, 2002, the Commission issued Order No. 12610 in F.C. 962, which established TELRIC-compliant UNE and resale discount rates for the District of Columbia.[5] Shortly thereafter, on December 19, 2002, Verizon DC filed its Section 271 application with the FCC for the District of Columbia, Maryland, and West Virginia. In its 271 application, Verizon DC indicated that it intended to appeal Order No. 12610 and that, while the appeal was pending, it would use UNE rates in the District that were either lower than the previous proxy rates or comparable to rates approved in New York, adjusted where possible to account for cost differences between DC and New York. On January 6, 2003, the Commission issued Order No. 12626, which clarified that Verizon DC may not implement rates benchmarked to rates approved in New York State without first obtaining Commission approval.[6] Verizon DC subsequently stated that it would implement the New York rates only through an interconnection agreement approved by the Commission.[7]

5. On January 3, 2003, Verizon DC filed an application for reconsideration of Order No. 12610 essentially arguing that the rates established by the Commission are unreasonably low. By operation of law, implementation of the rates adopted in Order No. 12610, are stayed pending our review of the application for reconsideration, and the proxy rates remain in effect. Verizon DC has not requested that the stay be lifted pursuant to D.C. Code, 2001 Ed. § 34-604(b).

6. Inasmuch as Verizon DC cannot use the proxy rates to support its Section 271 application, and because it believes the rates in Order No. 12610 are unreasonably low, Verizon DC filed the instant application ("Application") for approval of an interconnection agreement between it and Allegiance. The Amendment contains interconnection and UNE rates benchmarked to New York.[8] From Verizon DC 's filings,

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[4] *Iowa Util. Bd. v. FCC*, 219 F.3d 744 (8th Cir. 2000).

[5] *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996* ("F.C. No. 962"), Order No. 12610, rel. December 9, 2002.

[6] *F.C. No. 962, Formal Case No. 1011, In the Matter of Verizon Washington, DC Inc. Compliance with the Conditions Established in Section 271 of the Federal Telecommunications Act of 1996* ("F.C. No. 1011"), Order No. 12626, rel. January 6, 2003.

[7] F.C. No. 962, Verizon Washington, D.C. Inc.'s Response in Compliance with Order No. 12626, filed January 7, 2003.

[8] On August 27, 1999, the Commission approved a negotiated agreement between Bell Atlantic-Washington, D.C., Inc. and Allegiance Telecom of the District of Columbia, Inc. in Formal Case No. TIA-99-15. *See*, Formal Case No. TIA 99-15, Order No. 11445 (Aug. 27, 1999). *See also*, Amendment 1 to the agreement, Formal Case No. TIA 99-15, Order No. 12051 (Jul. 2, 2001). *See also*, Amendment 2 and 3 to the agreement, Formal Case No. TIA 99-15, Order No. 12213 (Oct. 19, 2001). *See also*, Amendment 4 to the agreement, Formal Case No. TIA 99-15, Order No. 12616 (Dec. 12, 2002).

the company apparently believes that using the negotiated rates under the interconnection agreement will satisfy the requirements of Section 271 of the Act. No comments were filed in response to the Application.

II. SCOPE OF REVIEW

7. Pursuant to Section 252(e)(2)(A) of the Act, the Commission may only reject a negotiated agreement, or an amendment to that agreement, if the Commission finds that it: 1) discriminates against a telecommunications carrier not a party to the agreement or 2) is not consistent with the public interest, convenience, and necessity. The Commission's analysis is constrained to solely considering these two factors when evaluating an interconnection agreement or an amendment to an existing agreement.

III. REPRESENTATIONS BY VERIZON

8. As noted above, Verizon DC maintains that the Amendment complies with both of these provisions of the Act for the following reasons. First, the same terms included in the Amendment have been offered to all CLECs operating in the District of Columbia. Second, the rates included in the Amendment satisfy the FCC's requirement of TELRIC-compliant rates because these rates are equal to, or lower than, rates for New York that have been found to be TELRIC-compliant, adjusted where possible to reflect cost differences between the District of Columbia and New York. Third, the rates included in the Amendment will be in force only for such period as the rates in Order No. 12610 are stayed, until the rates set in Order No. 12610, or such other rates are determined or approved by the Commission to replace the rates set in Order No. 12610, become effective in accordance with applicable law.[9]

IV. ANALYSIS AND DECISION

9. Pursuant to Section 252(d)(1)(A) of the Act, we held proceedings in F.C. 962 to establish UNE and resale discount rates that are not only cost-based, but also just and reasonable. Unlike the review we undertook in F.C. 962, a review of an interconnection agreement is not a rate-setting proceeding. As such, we do not make determinations that the rate is TELRIC-compliant, cost-based, or just and reasonable.[10] Instead, the parties negotiate their own rates and submit the agreement for approval.

10. We note that Verizon DC submitted the actual rates for the amended interconnection agreement, but did not offer any cost information to support them. Thus, a thorough review of the negotiated rates is not possible. Even if Verizon DC had submitted cost information, our role in reviewing a negotiated agreement is not to

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[9] Section 252(e)(4) of the Act allows state commissions 90 days to review interconnection agreements or the amendments thereto. Verizon DC asks that we expedite our review. We have granted that request by completing our review within two weeks of the date it was filed.

[10] Nor do we determine whether a negotiated rate satisfies the criteria for Section 271 relief. That determination is within the exclusive province of the FCC.

determine whether the rate is cost-based, TELRIC compliant, or just and reasonable. As pointed out earlier, our review of the agreement is limited to determining that the agreement is nondiscriminatory and consistent with the public interest, convenience, and necessity. After reviewing the entire record, we find that the agreement meets that narrow criteria. Therefore, the agreement must be approved.[11] The Commission directs the Applicants to comply with the procedures set forth in Sections 2600-2603.1 of the Commission's rules, to obtain Commission approval of any revised agreement into which the Applicants may enter.[12]

THEREFORE, IT IS ORDERED THAT:

11. The Application to amend the agreement filed on January 13, 2003, is **GRANTED.**

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

Sanford M. Speight

CHIEF CLERK

SANFORD M. SPEIGHT
ACTING COMMISSION SECRETARY

[11] We note that our colleague agrees with this decision although he has inexplicably chosen to issue a concurring opinion that does not deviate from the majority view in any meaningful way.

[12] *See*, 15 DCMR § 2603.1 (2001).

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., 2nd Floor, West Tower
WASHINGTON, D.C. 20005

CONCURRING OPINION OF

COMMISSIONER ANTHONY M. RACHAL III

Order No. 12646

January 31, 2003

FORMAL CASE NO. TIA 99-15, IN THE MATTER OF THE APPLICATION OF VERIZON WASHINGTON, DC, INC. FOR APPROVAL OF AN AMENDMENT TO AN INTERCONNECTION AGREEMENT WITH ALLEGIANCE TELECOM OF THE DISTRICT OF COLUMBIA, INC. UNDER SECTION 252(e) OF THE TELECOMMUNICATIONS ACT OF 1996, Order No. 12646

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") hereby approves an amendment to an interconnection agreement ("Amended Agreement") between Verizon Washington, DC Inc. ("Verizon DC") and Allegiance telecom of the District of Columbia, Inc. ("Allegiance") (collectively, "the Applicants").[1] This Amended Agreement was submitted to the Commission for approval pursuant to Section 252(e) of the Communications Act of 1934 ("the Act").[2] I concur with the majority opinion, however, I am compelled to comment on the dictum contained in the majority opinion.

I. BACKGROUND

2. On December 6, 2002, the Commission issued Order No. 12610 in F.C. 962, which established TELRIC-compliant UNE and resale discount rates for the District of Columbia.[3] Shortly thereafter, on December 19, 2002, Verizon DC filed its Section 271 application with the Federal Communications Commission ("FCC") for the District

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1 Formal Case No. TIA 99-15, *In the Matter of the Joint Application of Verizon Washington, DC Inc. and Allegiance Telecom of the District of Columbia, Inc. for Approval of an Interconnection Agreement Under Section 252(e) of the Telecommunications Act of 1996* ("F.C. No. TIA 99-15"), filed January 13, 2003.

2 47 U.S.C. § 252(e) (1996).

3 *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996* ("F.C. No. 962"), Order No. 12610, rel. December 9, 2002.

of Columbia. In its Section 271 application, Verizon DC indicated that it intended to appeal Order No. 12610 and that, while the appeal was pending, it would use UNE rates in the District that were either lower than the previous proxy rates or comparable to TELRIC-compliant rates approved in New York, adjusted where possible to account for cost differences between DC and New York. On January 6, 2003, the Commission issued Order No. 12626, which discussed that Verizon DC may not implement rates benchmarked to rates approved in New York State without first obtaining Commission approval.[4] I filed a dissent to the majority opinion in both Order No. 12610[5] and Order No. 12626.[6] Verizon DC subsequently clarified that it would implement the New York TELRIC rates only through an interconnection agreement approved by this Commission.[7]

3. On January 13, 2003, Verizon DC filed a request for approval of its interconnection agreement with Allegiance asserting that the Amendment complies with Section 252(e)(2)(A)(i) and (ii) because: 1) it has offered the same terms to all other Competitive Local Exchange Carriers; 2) the rates included in the Amendment satisfy the FCC requirement that the rates be TELRIC-compliant; and 3) the rates included in the agreement will be in force only for such period as the rates set in Order No. 12610 are stayed, or such other rates are determined or approved by the Commission to replace the rates set in Order No. 12610 and become effective in accordance with applicable law. At that time, those new rates will replace the rates adopted in this agreement.

II. SCOPE OF REVIEW

4. As the majority opinion indicates, the Commission may only reject a negotiated agreement, or an amendment to that agreement, if the Commission finds that it: 1) discriminates against a telecommunications carrier not a party to the agreement, or 2) is not consistent with the public interest, convenience, and necessity.[8] The Commission's analysis is constrained solely to considering these two factors when evaluating an interconnection agreement or an amendment to an existing agreement.

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4 *Formal Case No. 962, Formal Case No. 1011, In the Matter of Verizon Washington, DC Inc. Compliance with the Conditions Established in Section 271 of the Federal Telecommunications Act of 1996* ("F.C. No. 1011"), Order No. 12626, rel. January 6, 2003.

5 *Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996,* Order No. 12610, Dissent of Commissioner Anthony M. Rachal III, rel. December 6, 2002.

6 *Formal Case No. 962, Formal Case No. 1011, In the Matter of Verizon Washington, DC Inc. Compliance with the Conditions Established in Section 271 of the Federal Telecommunications Act of 1996* ("F.C. No. 1011"), Order No. 12626, Dissent of Commissioner Anthony M. Rachal III, rel. January 6, 2003.

7 *Formal Case No. 962,* Verizon Washington, D.C. Inc.'s Response in Compliance with Order No. 12626, filed January 7, 2003.

8 Pursuant to Section 252(e)(2)(A) of the Act.

III. DISCUSSION

5. Verizon DC maintains that the Amendment complies with both of these provisions of the Act for the following reasons. First, the same terms included in the Amendment have been offered to all CLECs operating in the District of Columbia. Second, the rates included in the Amendment satisfy the FCC's requirement of TELRIC-compliant rates because these rates are equal to, or lower than, rates for New York that have been found to be TELRIC-compliant, adjusted where possible to reflect cost differences between the District of Columbia and New York. Third, the rates included in the Amendment will be in force only for such period as the rates in Order No. 12610 are stayed. At such time that the rates set in Order No. 12610 are affirmed, or such other rates are determined or approved by the Commission to replace the rates set in Order No. 12610 and become effective in accordance with applicable law. At that time, those new rates will replace the rates adopted in this agreement.

6. This Commission is neither charged with the responsibility nor the authority to render a decision regarding whether or not the rates embodied in the interconnection agreement that is the subject of this Order, meets the FCC's requirements regarding TELRIC-compliant UNE rates. The FCC is solely responsible for this decision. The majority opinion goes to great lengths to discuss this issue that is not germane to the narrow scope of this Commission's inquiry in the context of reviewing this interconnection agreement. As stated earlier, this Commission' s role is limited to a review of whether or not the agreement: 1) discriminates against a telecommunications carrier not a party to the agreement, or 2) is inconsistent with the public interest, convenience, and necessity. With this in mind, all dictum regarding Verizon DC's quest to gain Section No. 271 approval at the FCC, is irrelevant to this proceeding.

7. As a final point, the applicants requested that this Commission handle its review of this interconnection agreement amendment on an expedited basis. I submit that this Order could have been issued much earlier, if the Commission had not taken so much time in this Order discussing issues that are not squarely before this Commission, but clearly fall under the purview of the FCC.

8. After reviewing the entire record, the majority finds that the agreement meets the narrow criteria for review articulated above. Therefore, the agreement must be approved. I concur with this holding.

IV. THEREFORE, IT IS ORDERED THAT:

9. With the aforementioned comments, I concur with the majority opinion regarding this matter.